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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CCO/142552

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 21, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration in regard to Child Care, a hearing was held on October 16, 2012, at Milwaukee, Wisconsin. At that time, the Petitioner noted that the agency had not revised one of the periods of overpayment as it had agreed to do in previous discussions with the agency. The agency conceded. The hearing was adjourned to allow the agency to send out the revised overpayment notice and to give the Petitioner additional time to review the revised overpayment. A subsequent hearing was held on November 15, 2012 after the agency issued a revised overpayment notice on October 27, 2012.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner for the periods of August 29, 2010 – December 31, 2010 and January 1, 2011 – June 30, 2011 in the amounts of \$2,265.50 and \$3,831.11.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: No Appearance

Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner and her spouse JHB have a minor child JH.
3. Petitioner has been employed with Milwaukee Public Schools (MPS) since January 3, 2006. JHB has been employed continuously since at least 2008.
4. On July 28, 2010, Petitioner received authorization for child care benefits for JH beginning August 1, 2010. JHB was not a member of Petitioner's household at the time. Therefore, he was not part of the assistance group and his income was not budgeted in the determination regarding child care benefit eligibility and authorization.
5. On or about August 21, 2010, the Petitioner and JHB signed a lease for and began residing at [REDACTED], Milwaukee, WI. Petitioner did not report to the agency that JHB was a member of the household.
6. On September 20, 2010, the agency issued a child care authorization for JH. The authorization was for enrollment-based child care, 40 hours/week, for the period of August 29, 2010 – February 5, 2011.
7. On or about November 27, 2010, the Petitioner and JHB moved to [REDACTED], Milwaukee, WI.
8. On December 21, 2010, the Petitioner called the agency to update her address to [REDACTED], Milwaukee, WI. She did not report JHB as a member of the household.
9. On January 12, 2011, the Petitioner submitted a Six Month Review Form (SMRF). JHB was not reported to be a household member.
10. On February 17, 2011, the agency received another SMRF from the Petitioner. She did not report JHB as a household member.
11. On February 23, 2011, the agency issued a Notice of Child Care Eligibility to the Petitioner.
12. On March 14, 2011, the agency issued a Child Care authorization for attendance-based child care for JH for the period of February 6, 2011 – July 30, 2011.
13. On April 19, 2011, JHB contacted the agency but was told the agency could not discuss the Petitioner's case because he was not included in the case.
14. On April 25, 2011, the agency issued a child care authorization for JH. The authorization was for enrollment-based child care, 35 hours/week, for the period of April 24, 2011 – July 23, 2011. The authorization was also for attendance-based child care for the period of February 6, 2011 – April 16, 2011.
15. On July 15, 2011, JHB contacted the agency regarding the overpayment. At that time, JHB informed the agency he was not living with the Petitioner, that he is an over-the-road driver and that he stays with the Petitioner when he is home.
16. On July 25, 2011, a child care authorization was issued for JH. The authorization was enrollment-based, 35 hours/week for the period of April 24, 2011 – July 23, 2011.
17. On August 2, 2011, the agency listed JHB as a household member with the Petitioner.
18. On June 28, 2012, the agency issued a Child Care Overpayment Notice to the Petitioner notifying the Petitioner that the agency is seeking to recover overpayments of \$3,831.11 for the period of January 1, 2011 – June 30, 2011. The basis for the overpayment is error on the part of the household to report JHB as a household member and resulting failure to include JHB's income in determining eligibility for child care. Based on JHB's income, the agency determined the

household was over the program income limit and was not eligible for child care benefits during the period of January 1, 2011 – June 30, 2011.

19. On October 17, 2012, the agency issued a Child Care Overpayment Notice to the Petitioner notifying the Petitioner that the agency is seeking to recover overpayments of \$2,265.50 for the period of August 29, 2010 – December 31, 2010. The basis for the overpayment is error on the part of the household to report JHB as a household member and resulting failure to include JHB's income in determining eligibility for child care. Based on JHB's income, the agency determined the household was over the program income limit and was not eligible for child care benefits during the period of August 29, 2010 – December 31, 2010.
20. On July 21, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, § DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Parents are required to report changes in their household that might affect their child care benefits within 10 days, including any change in household composition. Wisconsin Shares Child Care Assistance Manual (CC Manual) §§ 1.15.1 and 1.15.2. In this case, there is no evidence that the Petitioner or JHB reported to the agency that JHB was a member of the Petitioner's household. Therefore, JHB's income was not budgeted in determining the household's eligibility for child care benefits.

The Petitioner did not dispute that she and JHB have resided in the same household since August 21, 2010.

At the hearing, JHB questioned his liability to repay the overissuance as he is not the individual who applied for or received the benefits. He also questioned the amount of the overissuance based on the JH's attendance at child care.

With regard to the child's attendance, the agency noted that the authorization for JH was enrollment - based for all periods of time relevant herein with the exception of the period of February 6, 2011 – April 16, 2011 when the authorization was attendance-based. The agency produced evidence to show that it paid only for JH's actual attendance at the day care and that it seeks to recover those payments. In addition, the agency produced evidence to demonstrate that, for the remaining relevant periods of time, the agency paid the day care provider based on enrollment and the agency seeks to recover those payments.

With regard to liability for the overpayment, Wis. Admin. Code § DCF 101.23(3)(a) states that liability for an overpayment extends to any parent, nonmarital coparent, or stepparent whose family receives

benefits during the period that he or she is an adult member of the same household. In addition, liability for repayment is joint and several. Wis. Admin. Code § DCF 101.23(3)(b). As a parent and adult member of the household during the overpayment periods identified by the agency, both the Petitioner and JHB are jointly and severally liable for the overpayment.

I reviewed the agency's evidence with regard to the household income, program limits, the amount of child care paid to providers for JH and the overpayment worksheets. The Petitioner did not dispute the agency's income calculations. Once the amount of child care paid to providers had been explained by the agency with regard to attendance vs. enrollment-based payments, the Petitioner did not dispute the amount of child care benefit paid. Based on review of the evidence, I conclude the agency accurately calculated the overpayment.

### **CONCLUSIONS OF LAW**

The agency properly seeks recovery of overpayments from the Petitioner in the amount of \$6,096.61 (\$2265.50 + \$3,831.11) for the periods of August 29, 2010 – December 31, 2010 and January 1, 2011 – June 30, 2011.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

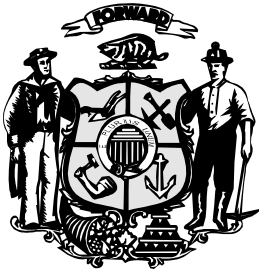
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of 2012

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 13, 2012.

Milwaukee Early Care Administration  
Public Assistance Collection Unit  
Child Care Fraud